



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FWP/170620

PRELIMINARY RECITALS

Pursuant to a petition filed December 08, 2015, under Wis. Admin. Code § HA 3.03(4) to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 12, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly ended the Petitioner's FoodShare benefits effective

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On August 11, 2015, the agency sent the Petitioner a letter referring him to the FSET program and advising him that his time limited benefits began in August 2015. (Exhibit 2)

3. That notice was incorrect. Petitioner's time limited benefits did not begin until September 2015. (Exhibit 3, pg. 8)
4. Also on August 11, 2015, the FSET office sent the Petitioner a notice, indicating that he had an appointment for August 20, 2015 at 9:00 a.m. (Exhibit 3, pg. 9)
5. On August 24, 2015, the FSET office sent the Petitioner a notice, indicating that he had an appointment for September 1, 2015 at 9:00 a.m. (Exhibit 3, pg. 11)
6. On September 3, 2015, the FSET office sent the Petitioner a notice, indicating that he had an appointment for September 9, 2015 at 9:00 a.m. (Exhibit 3, pg. 13)
7. On September 11, 2015, the FSET office sent the Petitioner a notice, indicating that he had an appointment for September 17, 2015 at 1:00 p.m. (Exhibit 3, pg. 14)
8. All notices were sent to the Petitioner at the [REDACTED], because Petitioner listed the [REDACTED], as his mailing address. (Exhibit 2, pg. 9; Testimony of [REDACTED]; Testimony of Petitioner)
9. Petitioner did not check his mail, due to transportation problems and did not go to any of the appointments. (Testimony of Petitioner)
10. On November 18, 2015, the agency sent the Petitioner a notice, advising him that his FoodShare benefits would be ending effective December 1, 2015, because he used up his time limited benefits. (Exhibit 2, pgs. 13-16)
11. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on December 8, 2015. (Exhibit 1)

DISCUSSION

Effective July 1, 2014, the Department of Health services implemented a new policy limiting benefits that childless adults in Kenosha, Racine and Walworth counties may receive. *FoodShare Wisconsin Handbook (FSH) §3.17.1.2* This policy is referred to as the Able Bodied Adults without Dependents (ABAWD) policy and was implemented statewide effective April 1, 2015. *Id.*

Under ABAWD rules, childless, able-bodied adults must either meet ABAWD work requirements or be exempt from the work requirement in order to receive FoodShare benefits. *FSH §3.17.1.1* ABAWDs who are not exempt and who do not meet the work requirement, are only allowed to receive 3 full months of time-limited benefits in a 36-month period. *Id.*

A person is considered a Non-ABAWD, if that person is:

1. Under 18 or age 50 and older,
2. Unable to work,
3. Residing in a FoodShare household with a child under age 18, or
4. Pregnant

FSH §3.17.1.4

An ABAWD may be exempt from work requirements if the person is:

1. Determined unfit for employment which includes:
 - a. Receiving temporary or permanent disability benefits
 - b. Mentally or physically unable to work, as determined by the IM agency

- c. Verified as unable to work by a statement from a health care professional or a social worker.
- 2. Receiving Unemployment Compensation, or has applied for Unemployment Compensation and is complying with those work requirements;
- 3. Regularly participating in an alcohol or other drug addiction treatment or rehabilitation program; or
- 4. A student of higher education who is otherwise eligible for FoodShare (see section 3.15.1)
- 5. A high school student 18 years of age or older, attending high school at least half time;
- 6. A primary caregiver of a dependent child under age 6 or an incapacitated person;
- 7. Receiving Transitional FS benefits; or
- 8. Meeting the ABAWD work requirement.

FSH §3.17.1.4

An ABAWD meets the ABAWD work requirement if one of the following applies:

- 1. Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
- 2. Participating and complying with an allowable work program at least 80 hours per month; * [includes FSET]
- 3. Both working and participating in an allowable work program for a combined total of at least 80 hours per month; or
- 4. Participating and complying with the requirements of a workfare program.

FSH, §13.17.1.7.

In the case at hand, the Petitioner does not dispute the fact that he meets the definition of an Able Bodied Adult Without Dependents. The Petitioner does not dispute the fact that he did not meet the work requirement in September, October or November 2015. As such, the agency correctly ended his FoodShare benefits in December 1, 2015.

The Petitioner asks that his benefits be continued, because he couldn't check his mail and because he didn't know about the ABAWD work requirement, until he spoke to his probation agent in December. First, I find it difficult to believe the Petitioner didn't check his mail for three months. Second, the Petitioner's arguments are based in equity, but it is the long standing policy of the Division of Hearings and Appeals that administrative law judges do not have equitable powers and may only make decisions based upon the law as it is written. As such, I have no authority to extend the Petitioner's FoodShare benefits, at this time.

CONCLUSIONS OF LAW

The agency correctly ended the Petitioner's FoodShare benefits effective December 1, 2015.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of January, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 19, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability